

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

MANCHESTER FIREFIGHTERS' ASSOCIATION, :
LOCAL 856, International Association :
of Firefighters, AFL-CIO :
Complainant: CASE NO. F-0104:4 :
v. :
CITY OF MANCHESTER :
Respondent :
:

APPEARANCES

City of Manchester and Manchester Board of Fire Commissioners:

Ray Raimo, Esq.
Wilbur Jenkins, Personnel Director

Manchester Firefighters' Association:

Vincent Wenners, Counsel, Esquire
Ronald Philibert, President

BACKGROUND

This case and the companion cases (see Decisions #780045 and 780046 also decided today) arise from the labor situation in Manchester between the City and the Manchester Firefighters. The Manchester Firefighters brought unfair labor practice charges against the City of Manchester and the Board of Fire Commissioners stating "the City has entered into a collective bargaining agreement with the Manchester Policemen's Association which agreement contains a provision that if the City provides any other group of municipal employees with wages that exceed one percent of the amount provided to policemen, the City must reopen negotiations with the policemen. This agreement was executed after the City and the Firefighters' Association had completed the evidence and the filing of briefs in a fact-finding hearing and prior to the fact-finding decision, accordingly, the City, in reality, chose to commit itself to the non-negotiable condition prior to the negotiations with the Firefighters Association and prior to the fact-finder's decision." In essence, the charge by the firefighters was that the City, by adopting broad guidelines for settlement with all of the City's unions and by refusing to commit itself to agreements outside of said guidelines coupled with other actions by the chief negotiator, Wilbur Jenkins, City Personnel Director, engaged in conduct which constituted a refusal to negotiate in good faith, a violation of RSA 273-A:5 I(e).

A hearing was held on the charges on October 24, 1978. At the hearing, the progress of negotiations from September 23, 1977 through September 15, 1978 were reviewed. Ronald Philibert, President of the Firefighter's Association testified that Mr. Jenkins had informed the firefighters that the Mayor and Aldermen had set guidelines for negotiations and that he was restricted to those guidelines. The progress of negotiations was shown to have reached impasse

on at least two occasions, to have resulted in decision of this Board (See Decision #780040) to have led to mediation and fact-finding, the result of which was a fact-finder's report which was accepted by the Firefighter's Association and rejected by the City and that at no time did the City indicate that it would exceed guidelines set by the Board of Mayor and Aldermen.

Also established at the hearing was the fact that the policemen of the City of Manchester and employees in four other City bargaining units were negotiating concurrently with the firefighters and that the guidelines established by the Board of Mayor and Aldermen also applied to those negotiations. Finally, the provision in the firefighter's contract, signed in the summer of 1978 was found to have provided that in the event any other union received a wage increase one percent greater than that of the policemen, the policemen's contract would be reopened for a renegotiation of wages. The union alleged that the course of conduct by the City amounted to failure to negotiate in good faith. The City contended that this was not the case, that guidelines were set to establish a framework in which all negotiations with all bargaining unit representatives could take place in a consistent way, that negotiations did result in movement on the part of the City on various issues, that the fact that the parties had negotiated to impasse and that one party had refused to accept the fact-finder's recommendations was not unfair and that a contract had in fact been signed September 15, 1978.

FINDINGS

The obligation to negotiate in good faith under RSA 273-A requires the parties to meet and confer in a spirit of willingness to discuss in an attempt to agree. There is, however, nothing in the law that requires any party to agree to any provision. In fact the obligation is defined in RSA 273-A:3 I which reads, in part "...good faith negotiations involves meeting at reasonable times and places in an effort to reach agreement on the terms of employment and to cooperate in mediation and fact-finding required by this chapter, but the obligation to negotiate in good faith shall not compel either party to agree to a proposal or to make a concession."

This Board does not read that statute to be so confined as to indicate that if either party in negotiations meets at reasonable times and places and cooperates in the mediation process and fact-findings process that it has negotiated in good faith since the critical portion of said passage is "in an effort to reach agreement on the terms of employment" which requires a spirit intent on seeking such agreement and reasonable efforts to investigate ways of finding such agreement.

Against the standard required, the actions of the City of Manchester must be tested. There is no indication that the City failed to meet when requested failed to cooperate in mediation or fact-finding and indeed there is no indication and this Board cannot find that the City or Mr. Jenkins by adopting or following guidelines set by the Board of Mayor and Aldermen to keep various negotiations consistent and overall settlement relatively equal, failed to seek to reach agreements within those guidelines. It was not established on the record that the City failed to make movement on various issues, nor was it established that the City Personnel Director merely "went through the motions" without seeking to reach agreement.

There is nothing improper about the setting of broad guidelines by the legislative body in consultation with its chief negotiator so that the City and the negotiator will know the expectations of the employer prior to negotiations. Likewise, there is nothing improper about putting a reopener provision in a contract such as was placed in the policemen's contract since this was an attempt by the City and the policemen to keep settlements consistent. This is not uncommon either in the private sector or in the public sector and certainly cannot comprise an unfair labor practice.

It is critical to point out that there is nothing in the statute which requires the City of Manchester to agree to any particular proposal of the union, provision of the fact-finder's report or even to agree with the firefighters on any provision which was already granted to the policemen. Indeed, the evidence as to the police contract indicated that the contract was not signed until after the City and firefighters had filed briefs with the fact-finder concerning their impasse. Certainly the reopener provision which did not exist prior to the fact-finder's report could not have been used prior to that time in any unfair way by the City and there is no evidence before the Board presented by either party that it was unfairly used thereafter, but merely that its existence was made known to the firefighters and they were provided with the opportunity to review a copy of the police agreement.

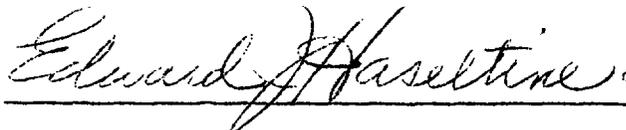
The evidence before the Board was that certain provisions of the contract between the parties were agreed on at various times during negotiations and that when proposals were made by the union, the proposals were either taken to the Board of Fire Commissioners or to the Board of Mayor and Aldermen depending on the nature of the proposal and which Board had jurisdiction.

Based on the evidence before us, this Board is unable to find that the charges of unfair labor practices against the City of Manchester by the Firefighters Association are sustained.

ORDER

The Board issues the following order:

Having found that the evidence at the hearing was insufficient to sustain the accusations of an unfair labor practice against the City of Manchester and the Manchester Board of Fire Commissioners, the request for an unfair labor practice finding is denied.



EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 21st day of November, 1978

Board members Moriarty and Cummings also present. All concurred, Board member Allman present for a portion of the hearing, took no part in the consideration of this case. Board member Anderson not present, took no part in the consideration of this case. Board Clerk Evelyn LeBrun and Board Counsel Bradford Cook also present.